

FILED

No. 32783-3-III

JUN 12, 2015
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

CHARLES R. SOKOLIK II, Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1. The court erred by accepting Mr. Sokolik's guilty plea.

Issue Pertaining to Assignment of Error

- A. Did the court err by accepting Mr. Sokolik's guilty plea?

(Assignment of Error 1).

II. STATEMENT OF THE CASE

Charles Robert Sokolik II was charged by amended information with count I: third degree assault and count II: harassment. (CP 30). As a result of plea negotiations, the State agreed to recommend the first offender option with a sentence of 60 days and credit for time served in exchange for Mr. Sokolik's *Alford* plea. (8/15/14 RP 4-10, 12). He acknowledged his statement on plea of guilty:

Alford plea. I am doing this to get the benefit of the bargain. If the information in the police report only were presented to the jury, I could be convicted. (*Id.* at 11).

A previous attempt to plead guilty proved unsuccessful with a different judge refusing to accept Mr. Sokolik's plea. (8/1/14 RP 8-10). This time, his plea was accepted and the court sentenced him to the first offender option with a sentence of 60 days and

credit for time served. (8/15/14 RP 20; CP 37). Mr. Sokolik pro se filed a notice of appeal. (CP 50).

III. ARGUMENT

A. The court erred by accepting Mr. Sokolik's guilty plea.

It is a violation of due process to accept a guilty plea without an affirmative showing the plea was made intelligently and voluntarily. *State v. Johnson*, 104 Wn.2d 338, 340, 705 P.2d 773 (1985) (quoting *State v. Barton*, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980)). CrR 4.2(d), addressing voluntariness, imposes even more requirements for accepting a guilty plea:

Voluntariness. The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently, and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied there is a factual basis for the plea.

As noted by the judge who refused to accept the guilty plea two weeks earlier, Mr. Sokolik "doesn't understand what's going on." (8/1/14 RP 4). Both counsel further acknowledged that "we anticipated this might be difficult to accomplish." (8/1/14 RP 9). The judge had commented Mr. Sokolik was being "deliberately obtuse" and had sorely tried his patience. (*Id.* at 8). Finally, the

judge said:

[Mr. Sokolik] doesn't want to be here. I can tell by the look in the eye he's giving me this. . . He's just giving me this straight attitude. Just a minute, you're giving me this attitude that I don't want to be here, I'm being a wise guy. You're pretending to be a little bit obtuse about these questions. That's it. (*Id.* at 9-10).

By his words and actions, Mr. Sokolik made it clear, and the judge understood, that he did not want to plead guilty and was merely going through a charade. Appropriately, this judge did not accept his guilty plea. CrR 4.2(d).

On August 15, 2014, a different judge did accept Mr. Sokolik's plea even though nothing had changed from August 1. He may have been better behaved than before, but the circumstances of his purported plea were the same and he no more wanted to plead guilty now than he did then. Accordingly, Mr. Sokolik did not enter a voluntary guilty plea. His due process rights were violated and he must be allowed to withdraw his plea. *Johnson, supra; State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183 (1996).

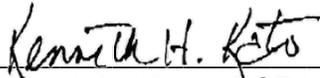
Mr. Sokolik has asked counsel to raise the issue of a drug evaluation and treatment, which DOC forced him to undergo and is

not reflected in this record. The State and the defense agreed at sentencing that neither was requesting a chemical dependency finding. (8/15/14 RP 11). Moreover, the judgment and sentence reflects that the community custody provision requiring him to obtain a chemical dependency evaluation and follow up with recommended treatment was originally checked off, but was crossed out. (CP 41). Because the court did not require it, Mr. Sokolik should not be forced to get an evaluation, much less treatment.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Sokolik respectfully urges this court to reverse his conviction and remand for withdrawal of his guilty plea.

DATED this 12th day of June, 2015.



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CERTIFICATE OF SERVICE

I certify that on June 12, 2015, I served a copy of the Brief of Appellant by first class mail, postage prepaid, on Charles R. Sokolik, c/o House of Charity, PO Box 223, 32 W. Pacific, Spokane, WA 99210; and by email, as agreed by counsel, on Brian O'Brien at SCPA appeals@spokanecounty.org.

